

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION NO.462 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw F.C.O.P.No.767 of 2017 pending on the file of Additional Family Court, Visakhapatnam and to transfer the same to the file of Senior Civil Judge, Madanapalle, Chittoor District on the following grounds:

- (i) that the petitioner being a woman, it is difficult for her to undertake journey from Madanapalle to Visakhapatnam, which is more than 700 kilometres, to appear before the Court on all dates of adjournments;
- (ii) that she filed a complaint against the respondent for the offence punishable under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and it is at the stage of investigation with Madanapalle Taluk police station and
- (iii) that she has no means to meet the travelling expenses.

2. Heard learned counsel for the petitioner.

3. The first and foremost ground is that the petitioner is unable to undertake journey covering distance of more than 700 kilometres on every date of adjournment. No doubt, it is difficult for a woman to undertake journey on every date of adjournment. But that by itself is not a ground to withdraw and transfer the case in view of the latest Judgment of the Hon'ble Apex Court in

Krishna Veni Nagam v. Harish Nagam¹, wherein the Hon'ble Apex Court issued certain guidelines to the Judges, which reads thus:

“Spirit behind the orders of this Court in allowing the transfer petitions filed by wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship. Our Constitutional scheme provides for guaranteeing equal access to justice, power of the State to make special provisions for women and children and duty to uphold the dignity of women. Various steps have been taken in this direction. However, the Apex Court also issued certain directions in para 18 of its judgment, which read thus:

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV Code of Civil Procedure.
- iv) E-Mail address/phone number, if any, at which litigant from out station may communicate.”

The above guidelines indirectly indicates that inconvenience for the petitioner to undertake journey may not be a ground to withdraw and transfer the said O.P. from one Court to another and at best, the witness can be examined by video conference.

4. Similarly, pendency of crime No.98 of 2017 with Madanapalle Taluk police station is also not a ground at this stage and even otherwise those two matters cannot be clubbed together and decided by one Court. Therefore, I find no ground to withdraw and transfer the said O.P.

¹ AIR 2017 SC 1345

5. The last ground urged before this Court is that the petitioner has no means to meet the expenses for travelling, boarding and lodging at Visakhapatnam. No doubt, the petitioner being a house wife may not be in a position to meet the expenses for travelling covering the distance of more than 700 kilometres, but in such a case, the husband shall deposit the expenses for travelling, boarding and lodging in terms of Order XXV of CPC and on such payment or deposit, the petitioner shall appear before the Court for recording her cross-examination by Court or for any other specific purpose as directed by the Court. Therefore, lack of means to meet the expenses is not a ground to withdraw and transfer the petition.

6. However, in view of the difficulties expressed by the petitioner, the Judge, Additional Family Court, Visakhapatnam, is directed not to insist the petitioner to appear on every date of adjournment as long as her counsel representing her and prosecuting her case on her behalf except on the dates when her cross-examination is required to be recorded or any other specific purpose as directed by the Court. This direction does not preclude the Court from passing any order in accordance with law against the petitioner in the event of failure of her counsel to represent and prosecute the case on her behalf.

7. With the above direction, the Transfer Civil Miscellaneous Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

JULY 24, 2017

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